

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matters of)	MB Docket No. 05-95	FCC 05M-26
)		DISPATCHED 04334
KEGG COMMUNICATIONS, INC.)	NAL/Acct No. MB 20041810004	
Licensee of Station K216EQ)	Facility ID No. 92810	
Daingerfield, Texas)		
)		
and)		
)		
Application for Construction Permit for a New)	Facility ID No. 94199	
Noncommercial Educational FM Station in)	File No. BPED-19990907MG	
Daingerfield, Texas)		

MEMORANDUM OPINION AND ORDER

Issued: May 2, 2005

Released: May 4, 2005

1. This proceeding involves the application of KEGG Communications, Inc. ("KEGG"), for a construction permit for a new noncommercial educational FM station in Daingerfield, Texas, and materials relating to KEGG's operation of noncommercial educational FM translator station K216EQ in Daingerfield, Texas. By *Order to Show Cause[,]* *Hearing Designation Order and Notice of Opportunity for Hearing*, FCC 05-66, released March 15, 2005 ("OSC"), this case was designated for hearing. Issues were specified to determine the extent to which KEGG complied with certain specified FM translator rules; to determine whether KEGG made misrepresentations of fact or was lacking in candor with regard to K216EQ's primary station and/or whether K216EQ originated programming; and to determine whether KEGG is qualified to be and remain the licensee of K216EQ. (OSC at para. 9.) In order to avail itself of the opportunity to be heard, the OSC provided that KEGG shall file a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the specified issues. (*Id.* at para. 12.)

2. On or about March 18, 2005, the Office of Administrative Law Judges mailed the OSC to KEGG by Certified Mail, Return Receipt Requested. Included in that mailing was a copy of an *Order*, FCC 05M-13, released March 17, 2005, scheduling a prehearing conference in this proceeding for April 27, 2005. The records of the Office of Administrative Law Judges establish that KEGG received both orders on April 4, 2005. (Judge's Ex. 1.)

3. On March 23, 2005, KEGG faxed to the Presiding Judge a "Show Cause Reply" which was dated March 16, 2005. (Judge's Ex. 2.) The Show Cause Reply was signed by KEGG's President, Bill Wright. (*Id.* at p. 3.) In pertinent part, the Show Cause Reply stated that Mr. Wright "plan[s] to attend the hearing . . ." (*Id.* at p. 4.)

4. By *Memorandum Opinion and Order*, FCC 05M-16, released March 30, 2005, the Show Cause Reply was dismissed because it failed to comply with numerous Commission procedural rules.¹ Most significantly, it was held that the Show Cause Reply was not properly or officially filed with the Commission. (MO&O at para. 4.) It was further noted that the OSC

¹ Among the provisions which were not adhered to were Sections 0.401, 1.7, 1.47, 1.51(a)(1), 1.52, 1.209, 1.211, 1.291(a)(4), and 1.296 of the Commission's Rules.

required KEGG to file a written appearance in accordance with Section 1.221(c) of the Rules, and it was held that KEGG's mere statement that Mr. Wright "plan[s] to attend the hearing" did not comport with the requirements of that rule. (*Id.* at para 5.) Nevertheless, KEGG was given another opportunity to file a written appearance "which complies in all respects with the Commission's rules." (*Id.* at p. 2, n.2.) The written appearance was due to be filed on or before April 15, 2005. (*Id.* at p. 3.)

5. No such written appearance was filed by KEGG. On the contrary, on April 18, 2005, the Presiding Judge received another fax from Mr. Wright. (Judge's Ex. 3.) In this fax, Mr. Wright stated:

At this time I am surrendering the license of K216EQ[,] Daingerfield[,] Texas, and requesting the application pending before the FCC In [sic] regards to KEGG Christian Communication [sic] be dismissed without prejudice.

(*Id.* at p. 1.) Appended to this fax was a copy of the license for station K216EQ. (*Id.* at pp. 2-4.) On April 19, 2005, the Presiding Judge's office caused this fax to be filed with the Commission's Office of the Secretary. (*Id.* at p. 1.)

6. A prehearing conference in this proceeding was held on April 27, 2005. No one attended or entered an appearance on behalf of KEGG.

7. Section 1.221(c) of the Rules provides that, in application proceedings, the failure to file a written appearance within the time specified shall result in the dismissal of the application with prejudice for failure to prosecute. Since KEGG failed to file a written appearance, its application for a construction permit for a new noncommercial educational FM station must be dismissed.

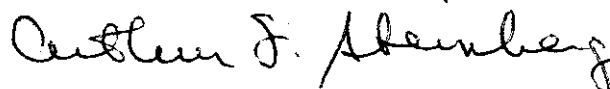
8. With regard to KEGG's operation of FM translator station K216EQ, Section 1.92(a)(1) of the Rules provides that the failure to file the requisite notice of appearance constitutes a waiver of the right to a hearing. Given the circumstances of this case, it must be concluded that KEGG has waived its right to a hearing on the specified issues. Consequently, in accordance with Section 1.92(c) of the Rules, the hearing proceeding will be terminated and this matter will be certified to the Commission.

Accordingly, IT IS ORDERED that the application of KEGG Communications, Inc., for a construction permit for a new noncommercial educational FM station in Daingerfield, Texas (File No. BPED-19990907MG), IS DISMISSED with prejudice for failure to prosecute.

IT IS FURTHER ORDERED that, pursuant to Section 1.92(c) of the Commission's Rules, the matter of KEGG's operation of noncommercial educational FM translator station K216EQ, Daingerfield, Texas, IS CERTIFIED to the Commission.

IT IS FURTHER ORDERED that the hearing in this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Arthur I. Steinberg
Administrative Law Judge